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TOWNSEND AND TOWNSEND AND CREW, LLP (018563) TWO EMBARCADERO CENTER, EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				NAJARIAN, LENA
ART UNIT		PAPER NUMBER		
3626				

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/756,885	CHISHTI ET AL.	
<b>Examiner</b>	<b>Art Unit</b>	3626	
Lena Najarian			

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 January 2001.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 31-45 and 60-70 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25,28-30,46-54,58 and 59 is/are rejected.
- 7) Claim(s) 26-27 and 55-57 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I (claims 1-30 and 46-59) in the reply filed on March 15, 2005 is acknowledged.
2. Claims 31-45 and 60-70 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without traverse** in the reply filed on March 15, 2005.

### ***Claim Objections***

3. Claims 26-27 and 55-57 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 13 recites the limitation "the coordinator" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

7. Claims 1-25, 28-30, 46-54, and 58-59 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

(A) In the present case, claims 1-13 only recite an abstract idea. The recited steps of exemplary claim 1 of merely certifying a group of practitioners to perform a medical procedure, identifying individual patients who wish to receive the procedure, and providing to the identified individual patients a list of certified practitioners does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention refers patients to practitioners. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-13 are deemed to be directed to non-statutory subject matter.

(B) In the present case, claims 14-25 & 28-30 only recite an abstract idea. The recited steps of exemplary claim 14 of merely certifying dental practitioners to perform a dental procedure, informing a potential patient population of the availability of the procedure, identifying individual patients who wish to receive the procedure, and providing to the identified individual patients referral lists of certified practitioners does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention refers patients to dental practitioners. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 14-30 are deemed to be directed to non-statutory subject matter.

(C) Moreover, in the present case, claims 46-54 & 58-59 only recite an abstract idea. The recited steps of exemplary claim 46 of merely certifying practitioners to perform a medical procedure, tracking the number of times each certified

practitioner performs the procedure, and maintaining a patient referral directory does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention maintains a referral directory. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 46-54 & 58-59 are deemed to be directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-5 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBruin-Ashton (6,014,629) in view of Falchuk et al. (US 2002/0152096 A1).

(A) Referring to claim 1, DeBruin-Ashton discloses a method for referring patients to practitioners said method comprising (col. 1, lines 36-39 of DeBruin-Ashton;

the Examiner interprets “directing” to be a form of “referring,” “customers” to be a form of “patients,” and “physicians” to be a form of “practitioners”):

identifying individual patients who wish to receive the procedure (col. 6, lines 1-3 of DeBruin-Ashton); and

providing to the identified individual patients a list of certified practitioners (col. 6, lines 56-62 of DeBruin-Ashton), wherein those practitioners who have performed more procedures than others of the practitioners are placed preferentially on the list (col. 12, lines 47-54 of DeBruin-Ashton; the Examiner interprets using “selection algorithms” and “applying weighting factors to the selection process” to be a form of placing practitioners with a certain amount of experience “preferentially on a list”).

DeBruin-Ashton does not disclose certifying a group of practitioners to perform a medical procedure.

Falchuk discloses certifying a group of practitioners to perform a medical procedure (para. 21 and para. 30 of Falchuk; the Examiner interprets “accreditation” to be a form of “certifying”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Falchuk within DeBruin-Ashton. The motivation for doing so would have been to educate medical professionals for effective delivery of health care services (para. 8, lines 6-9 of Falchuk).

(B) Referring to claims 2-4, DeBruin-Ashton does not disclose wherein certifying the practitioners comprises training practitioners, wherein certifying the

practitioners comprises testing the practitioners, and wherein certifying comprises requiring that the practitioners have performed at least one procedure.

Falchuk discloses wherein certifying the practitioners comprises training practitioners (para. 21 of Falchuk), wherein certifying the practitioners comprises testing the practitioners (para. 30 of Falchuk), and wherein certifying comprises requiring that the practitioners have performed at least one procedure (para. 30, lines 17-21 of Falchuk; the Examiner interprets “credits accumulated” to be a form of “performed at least one procedure”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Falchuk within DeBruin-Ashton. The motivation for doing so would have been to ensure standards and the effective delivery of health care services (para. 8, lines 6-9 of Falchuk).

(C) Referring to claim 5, DeBruin-Ashton discloses removing practitioners from the certified group (col. 2, lines 42-44 of DeBruin-Ashton; the Examiner interprets “updated...to reflect...the physicians that left the service” to be a form of “removing practitioners”).

(D) Referring to claim 12, DeBruin-Ashton discloses wherein identifying individual patients comprises collecting names and contact information from individual patients (col. 5, lines 65-67 of DeBruin-Ashton; the Examiner interprets “address” to be a form of “contact information” and “customer” to be a form of “patient”).

(E) Referring to claim 13, DeBruin-Ashton discloses wherein at least some of the individual patients contact the coordinator in response to solicitations (col. 4,

lines 31-47 of DeBruin-Ashton; the Examiner interprets “advertising materials” to be a form of “solicitations”).

10. Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBruin-Ashton (6,014,629) in view of Falchuk et al. (US 2002/0152096 A1) as applied to claim 1 above, in view of Tawil (5,225,976), and further in view of Kurzius et al. (6,385,620 B1).

(A) Referring to claim 6, DeBruin-Ashton discloses wherein practitioners are preferentially placed on lists (col. 12, lines 47-54 of DeBruin-Ashton; the Examiner interprets using “selection algorithms” and “applying weighting factors to the selection process” to be a form of “preferentially placed on lists”).

DeBruin-Ashton and Falchuk do not disclose wherein the practitioners are placed into tiers based on the number of procedures performed.

Tawil discloses tracking the number of times the procedure has been performed (col. 3, lines 11-21 of Tawil).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Tawil within DeBruin-Ashton and Falchuk. The motivation for doing so would have been to include background information on providers available for review by the patient to assist the patient’s decision making process (col. 4, lines 57-59 of Tawil).

Kurzius discloses placing candidates into tiers based on experience and proficiency level (col. 17, lines 48-52 of Kurzius).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Kurzius within DeBruin-Ashton, Falchuk, and Tawil. The motivation for doing so would have been to have a ranking system that would save patients time associated with the review of practitioner profiles (col. 15, lines 45-50 of Kurzius).

(B) Referring to claim 7, DeBruin-Ashton discloses wherein the individual practitioners are randomly ordered within a tier (col. 8, lines 36-42 of DeBruin-Ashton; the Examiner interprets “random selection process” to be a form of “randomly ordered within a tier”).

(C) Referring to claims 8-10, DeBruin-Ashton and Falchuk do not disclose wherein each tier is defined by a threshold number of procedures performed over a selected period of time, wherein each tier is defined by the aggregate number of procedures performed, and wherein the practitioners are assigned to at least three tiers.

Tawil discloses tracking the number of times the practitioner has performed the procedure within a given amount of time (col. 3, lines 11-13 of Tawil).

Kurzius discloses wherein candidates are assigned to at least three tiers (col. 17, lines 48-52 of Kurzius; the Examiner interprets “beginner, intermediate, full-understanding, or expert” to be a form of “tiers”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Tawil and Kurzius within DeBruin-Ashton and Falchuk. The motivation for doing so would have been to

provide information for review by the patient to assist the patient's decision making process (col. 4, lines 57-59 of Tawil) and to sort the practitioners by proficiency level (col. 17, lines 48-52 of Kurzius).

(D) Referring to claim 11, DeBruin-Ashton and Falchuk do not disclose wherein the practitioners are assigned to an initial tier when they become certified, to an intermediate tier when they treat a first threshold number of patients over a preselected time period, and to a higher tier when they treat a second threshold number of patients over the preselected time period.

Tawil discloses tracking the number of times the practitioner has performed the procedure within a given amount of time (col. 3, lines 11-13 of Tawil).

Kurzius discloses placing candidates into tiers based on experience and proficiency level (col. 17, lines 48-52 of Kurzius).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Tawil and Kurzius within DeBruin-Ashton and Falchuk. The motivation for doing so would have been to provide information for review by the patient to assist the patient's decision making process (col. 4, lines 57-59 of Tawil) and to sort the practitioners by proficiency level (col. 17, lines 48-52 of Kurzius).

11. Claims 14, 16-19, 21-22, and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBruin-Ashton (6,014,629) in view of Joao (US 2002/0032583 A1).

(A) Referring to claim 14, DeBruin-Ashton discloses a method for referring patients to practitioners, said method comprising (col. 1, lines 36-39 of DeBruin-Ashton; the Examiner interprets "directing" to be a form of "referring," "customers" to be a form of "patients," and "physicians" to be a form of "practitioners"):

informing a potential patient population of the availability of the procedure (col. 4, lines 60-63 and col. 12, lines 19-22 of DeBruin-Ashton; the Examiner interprets "advertising" to be a form of "informing");

identifying individual patients who wish to receive the procedure (col. 6, lines 1-3 of DeBruin-Ashton);

providing to the identified individual patients referral lists of certified practitioners wherein individual practitioners are preferentially placed on the referral lists based on one or more performance criteria (col. 3, line 49 – col. 4, line 14 of DeBruin-Ashton; the Examiner interprets "directory" to be a form of "referral lists" and "having specialties corresponding to a particular customer's needs" to be a form of "performance criteria").

DeBruin-Ashton does not disclose wherein the practitioner is a dental practitioner and certifying dental practitioners to perform a dental procedure.

Joao discloses dental and oral surgery training (para. 167).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Joao within DeBruin-Ashton. The motivation for doing so would have been to train a variety of healthcare professionals, specifically dental practitioners (para. 167 of Joao).

(B) Referring to claim 16, DeBruin-Ashton does not disclose wherein the performance criteria include data relating to successful patient outcomes.

Joao discloses wherein the performance criteria include data relating to successful patient outcomes (para. 161 of Joao; the Examiner interprets "treatment success rates" to be a form of "successful patient outcomes").

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Joao within DeBruin-Ashton. The motivation for doing so would have been to provide important information about healthcare-related professionals (para. 29 of Joao).

(C) Referring to claim 17, DeBruin-Ashton discloses wherein informing comprises soliciting patients (col. 4, lines 31-47 of DeBruin-Ashton).

(D) Referring to claim 18, DeBruin-Ashton discloses wherein soliciting comprises advertising in print and/or electronic media (col. 4, lines 31-47 of DeBruin-Ashton).

(E) Referring to claim 19, DeBruin-Ashton does not disclose wherein certifying the dental practitioners comprises training the dental practitioners.

Joao discloses dental training (para. 167 of Joao).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Joao within DeBruin-Ashton. The motivation for doing so would have been to allow practitioners to remain current with procedures in their field (para. 8 of Joao).

(F) Referring to claim 21, DeBruin-Ashton does not disclose wherein certifying comprises requiring that the dental practitioners have performed at least one procedure.

Joao discloses wherein certifying comprises requiring that the dental practitioners have performed at least one procedure (para. 318 of Joao).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Joao within DeBruin-Ashton. The motivation for doing so would have been to evaluate the practitioner's performance and aptitude (para. 318 of Joao).

(G) Referring to claim 22, DeBruin-Ashton discloses removing practitioners from the certified group (col. 2, lines 42-44 of DeBruin-Ashton).

DeBruin-Ashton does not specifically disclose that the practitioners are dental practitioners.

Joao discloses dental practitioners (para. 131, lines 1-7 of Joao).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Joao within DeBruin-Ashton. The motivation for doing so would have been to provide a system that could be used by a variety of practitioners in the healthcare field (para. 131 of Joao).

(H) Referring to claim 29, DeBruin-Ashton discloses wherein identifying individual patients comprises collecting names and contact information from individual patients who contact a coordinator (col. 5, lines 58-67 of DeBruin-Ashton; the Examiner interprets "healthcare provider service" to be a form of "coordinator").

(I) Referring to claim 30, DeBruin-Ashton discloses wherein at least some of the individual patients contact a referral center who produces the referral list in response to solicitations from the coordinator (col. 4, lines 48-67 of DeBruin-Ashton).

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeBruin-Ashton (6,014,629) in view of Joao (US 2002/0032583 A1) as applied to claim 14 above, and further in view of Tawil (5,225,976).

(A) Referring to claim 15, DeBruin-Ashton and Joao do not disclose wherein the performance criteria include the number of dental procedures performed over a preselected time period.

Tawil discloses wherein the performance criteria include the number of dental procedures performed over a preselected time period (col. 3, lines 11-13 and col. 2, lines 66-67 of Tawil).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Tawil within DeBruin-Ashton and Joao. The motivation for doing so would have been to assist the patient's decision making process by providing information on the practitioners (col. 4, lines 57-59 of Tawil).

13. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeBruin-Ashton (6,014,629) in view of Joao (US 2002/0032583 A1) as applied to claim 14 above, and further in view of Falchuk et al. (US 2002/0152096 A1).

(A) Referring to claim 20, DeBruin-Ashton and Joao do not disclose wherein certifying the dental practitioners comprises testing the dental practitioners.

Falchuk discloses an examination (para. 30 of Falchuk).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Falchuk within DeBruin-Ashton and Joao. The motivation for doing so would have been to test the knowledge gained (para. 30 of Falchuk).

14. Claims 23-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBruin-Ashton (6,014,629) in view of Joao (US 2002/0032583 A1), and in view of Tawil (5,225,976), as applied to claims 14-15 above, and further in view of Kurzius et al. (US 6,385,620 B1).

(A) Referring to claim 23, DeBruin-Ashton and Joao do not disclose wherein the dental practitioners are placed into tiers based on the number of procedures performed and wherein the tiers are arranged in order on the list.

Tawil discloses tracking the number of times the procedure has been performed (col. 3, lines 3-21 of Tawil).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Tawil within DeBruin-Ashton and Joao. The motivation for doing so would have been to include background information on providers available for review by the patient to assist the patient's decision making process (col. 4, lines 57-59 of Tawil).

Kurzius discloses placing candidates into tiers based on experience and proficiency level and wherein the tiers are arranged in order (col. 17, lines 48-52 and col. 15, lines 23-29 of Kurzius; the Examiner interprets “ranking” to be a form of “arranged in order”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Kurzius within DeBruin-Ashton, Joao, and Tawil. The motivation for doing so would have been to have a ranking system that would save patients time associated with the review of practitioner profiles (col. 15, lines 45-50 of Kurzius).

(B) Referring to claim 24, DeBruin-Ashton discloses a random selection process (col. 8, lines 36-42 of DeBruin-Ashton).

(C) Referring to claim 25, DeBruin-Ashton, Joao, and Tawil do not disclose wherein the dental practitioners are assigned to at least three tiers.

Kurzius discloses wherein candidates are assigned to at least three tiers (col. 17, lines 48-52 of Kurzius; the Examiner interprets “beginner, intermediate, full-understanding, or expert” to be a form of “tiers”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Kurzius within DeBruin-Ashton, Joao, and Tawil. The motivation for doing so would have been to sort the practitioners by proficiency level (col. 17, lines 48-52 of Kurzius).

(D) Referring to claim 28, DeBruin-Ashton and Joao do not disclose wherein the dental practitioners are assigned to an initial tier when they become certified, to an intermediate tier when they treat a first threshold number of patients over a

preselected time period, and to a higher tier when they treat a second threshold number of patients over the preselected time period.

Tawil discloses tracking the number of times the practitioner has performed the procedure within a given amount of time (col. 3, lines 11-13 of Tawil).

Kurzius discloses placing candidates into tiers based on experience and proficiency level (col. 17, lines 48-52 of Kurzius).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Tawil and Kurzius within DeBruin-Ashton and Joao. The motivation for doing so would have been to provide information for review by the patient to assist the patient's decision making process (col. 4, lines 57-59 of Tawil) and to sort the practitioners by proficiency level (col. 17, lines 48-52 of Kurzius).

15. Claims 46-49, 51-52, and 58 rejected under 35 U.S.C. 103(a) as being unpatentable over Tawil (5,225,976) in view of Falchuk et al. (US 2002/0152096 A1).

(A) Referring to claim 46, Tawil discloses a method for maintaining a referral directory, said method comprising (col. 3, lines 3-18 of Tawil; the Examiner interprets "database" to be a form of "directory" and "updated" to be a form of "maintaining"):

tracking the number of times each certified practitioner performs the procedure (col. 3, lines 11-18 of Tawil; the Examiner interprets “updated” to be a form of “tracking”); and

maintaining a patient referral directory, wherein the practitioners are prioritized on the list based on the number of times each has performed the procedure (col. 3, lines 11-21 of Tawil; the Examiner interprets “sorted” to be a form of “prioritized”).

Tawil does not disclose certifying practitioners to perform a medical procedure.

Falchuk discloses certifying practitioners to perform a medical procedure (para. 21 and para. 30 of Falchuk).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Falchuk within Tawil. The motivation for doing so would have been to educate medical professionals for effective delivery of health care services (para. 8, lines 6-9 of Falchuk).

(B) Referring to claims 47-49, Tawil does not disclose wherein certifying the practitioners comprises training practitioners, wherein certifying the practitioners comprises testing the practitioners, and wherein certifying comprises requiring that the practitioners have performed at least one procedure.

Falchuk discloses wherein certifying the practitioners comprises training practitioners (para. 21 of Falchuk), wherein certifying the practitioners comprises testing the practitioners (para. 30 of Falchuk), and wherein certifying comprises requiring that the practitioners have performed at least one procedure (para. 30,

lines 17-21 of Falchuk; the Examiner interprets “credits accumulated” to be a form of “performed at least one procedure”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Falchuk within Tawil. The motivation for doing so would have been to ensure standards and the effective delivery of health care services (para. 8, lines 6-9 of Falchuk).

(C) Referring to claim 51, Tawil discloses wherein tracking comprises determining the number of times a practitioner acquires a kit to perform the procedure on a patient (col. 3, lines 11-18 and 42-47 of Tawil; the Examiner interprets “determines the medical services and pharmaceutical prescriptions which are needed” to be a form of “acquires a kit”).

(D) Referring to claim 52, Tawil discloses dividing the directory based on geographic location (col. 2, lines 46-47 and 64-65 of Tawil).

(E) Referring to claim 58, Tawil discloses wherein the directory is maintained in an electronic database (see abstract of Tawil).

16. Claims 50 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tawil (5,225,976) in view of Falchuk et al. (US 2002/0152096 A1) as applied to claims 46 and 58 above, and further in view of DeBruin-Ashton (6,014,629).

(A) Referring to claim 50, Tawil and Falchuk do not disclose removing practitioners from the certified group.

DeBruin-Ashton discloses removing practitioners from the certified group.

(col. 2, lines 42-44 of DeBruin-Ashton; the Examiner interprets “updated...to reflect...the physicians that left the service” to be a form of “removing practitioners”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of DeBruin-Ashton within Tawil and Falchuk. The motivation for doing so would have been to have a routinely updated directory with the current list of practitioners active in the plan (col. 2, lines 57-59 of DeBruin-Ashton).

(B) Referring to claim 59, Tawil discloses generating a referral list for an individual patient from the patient referral directory, wherein the listed is generated automatically from the electronic database based on the patient's geographic location (see abstract and col. 2, lines 64-65 of Tawil).

Tawil and Falchuk do not disclose wherein practitioners with a higher priority have an increased likelihood of appearing on any referral list.

DeBruin-Ashton discloses wherein practitioners with a higher priority have an increased likelihood of appearing on any referral list (col. 3, lines 49-63 and col. 5, line 58 – col. 6, line 23 of DeBruin-Ashton; the Examiner interprets “specialties” to be a form of “higher priority” and “intelligently extracted” to be a form of “increased likelihood of appearing”).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of DeBruin-Ashton within Tawil and Falchuk. The motivation for doing so would have been for practitioners

corresponding to customer's needs to show up first on the list (col. 3, lines 49-63 of DeBruin-Ashton).

17. Claims 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tawil (5,225,976) in view of Falchuk et al. (US 2002/0152096 A1) as applied to claims 46 and 52 above, and further in view of Kurzius et al. (6,385,620 B1).

(A) Referring to claims 53-54, Tawil and Falchuk do not disclose wherein the list is divided into at least two tiers with practitioners who have performed more than a first threshold number of procedures being in a higher tier and wherein the list is divided into at least three tiers with practitioners who have performed more than a first threshold number of procedures being in a higher tier, those who have performed more than a second threshold number but less than the first being in a lower tier, and those who have performed less than the second threshold number being in a still lower tier.

Kurzius discloses placing candidates into tiers based on experience and proficiency level (col. 17, lines 48-52 of Kurzius).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Kurzius within Tawil and Falchuk. The motivation for doing so would have been to sort the practitioners by proficiency level (col. 17, lines 48-52 of Kurzius).

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a medical practitioner credentialing system (US 6,571,214 B2 and 6,035,276), a system and method for purchasing health-related services (US 2002/0069085 A1), a system and method for matching aggregated user experience data to a user profile (US 2001/0034639 A1), and health pages (<http://thehealthpages.com>).

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is (703) 305-0260. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703) 305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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*JT*

In

3-31-05

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